

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 12-618V

Filed: August 10, 2017

Not for Publication

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J.T.,

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Petitioner,

\*

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v.

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SECRETARY OF HEALTH  
AND HUMAN SERVICES,

\*

\*

\*

Respondent.

\*

\*

Damages decision based partially  
on a proffer; Tetanus-diphtheria-  
acellular pertussis (Tdap); Table  
brachial neuritis

\*\*\*\*\*

Lisa A. Roquemoire, Rancho Santa Margarita, for petitioner.

Lisa A. Watts, Washington, DC, for respondent.

**MILLMAN, Special Master**

### **DECISION AWARDING DAMAGES<sup>1</sup>**

On September 19, 2012, petitioner filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-10–34 (2012), alleging that tetanus-diphtheria-acellular pertussis (“Tdap”) vaccine he received on October 1, 2009 caused him neurological injury. Pet. at ¶¶ 1 and 2. On December 10, 2012, respondent filed a Rule 4(c) Report, conceding that petitioner suffered a Table brachial neuritis caused by his receipt of Tdap vaccine and recommending compensation. At the request of respondent, the undersigned issued a Ruling on Entitlement on August 10, 2017.

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<sup>1</sup> Because this unpublished ruling contains a reasoned explanation for the special master’s action in this case, the special master intends to post this unpublished ruling on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document’s disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall redact such material from public access.

On August 10, 2017, respondent filed a status report regarding damages, in which respondent proffers the amount J.R. should be awarded for life care expenses, pain and suffering, past unreimbursable expenses, and an amount sufficient to purchase the annuity contract described in the status report. Respondent also incorporates the amount the undersigned ruled should be awarded in lost earnings in her Second Ruling on Wage Loss issued on July 28, 2017.

The undersigned finds the terms of respondent's proffer to be reasonable. Pursuant to the proffer, the court awards:

- a. a lump sum of **\$71,467.99** in the form of a check payable to petitioner representing compensation for life care expenses expected to be incurred during the first year after judgment; and
- b. a lump sum of **\$220,000.00** in the form of a check payable to petitioner representing compensation for pain and suffering; and
- c. a lump sum of **\$145,000.00**, in the form of a check payable to petitioner representing compensation for past unreimbursable expenses; and
- d. an amount sufficient to purchase the annuity contract described in section II.B of the attached status report.

The undersigned also awards **\$2,587,895.00** in the form of a check payable to petitioner representing compensation for petitioner's lost earnings.

Therefore, in sum, the undersigned awards a lump sum of **\$3,024,362.99** and an amount sufficient to purchase the annuity contract described in section II.B of the attached status report.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.<sup>2</sup>

**IT IS SO ORDERED.**

Dated: August 10, 2017

/s/ Laura D. Millman  
Laura D. Millman  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party, either separately or jointly, filing a notice renouncing the right to seek review.



B. Lost Earnings

On July 28, 2017, Special Master Millman issued her Second Ruling on Wage Loss awarding petitioner a total of \$2,587,895.00 for his past and future lost earnings as a result of his vaccine-related injury pursuant to 42 U.S.C. § 15(a)(3)(A).

C. Pain and Suffering

Respondent proffers that J.T. should be awarded \$220,000.00 in actual and projected pain and suffering. This amount reflects that any award for projected pain and suffering has been reduced to net present value. See 42 U.S.C. § 300aa-15(a)(4).

D. Past Unreimbursable Expenses

Evidence supplied by petitioner documents J.T.'s expenditure of past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$145,000.00.

**II. Form of the Award**

The parties request that the compensation provided to petitioner be made through a combination of lump sum payments and future annuity payments as described below, and request that the Special Master's decision and the Court's judgment award the following:<sup>2</sup>

A. A lump sum payment of \$3,024,362.99, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$71,467.99), lost earnings awarded by the Special Master (\$2,587,895.00), pain and suffering (\$220,000.00), and past unreimbursable expenses (\$145,000.00), in the form of a check payable to petitioner, J.T.

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<sup>2</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses and future pain and suffering.

B. An amount sufficient to purchase an annuity contract,<sup>3</sup> subject to the conditions described below, that will provide payments for the life care items contained in the life care plan, as illustrated by the chart at Tab A, attached hereto, paid to the life insurance company<sup>4</sup> from which the annuity will be purchased.<sup>5</sup> Compensation for Year Two (beginning on the first anniversary of the date of judgment) and all subsequent years shall be provided through respondent's purchase of an annuity, which annuity shall make payments to petitioner, J.T., only so long as J.T. is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to petitioner in monthly, quarterly, annual or other installments. The "annual amounts" set forth in the chart at Tab A describe only the total yearly sums to be paid to J.T. and do not require that the payment be made in one annual installment.

1. Growth Rate

Respondent proffers that a four percent (4%) growth rate should be applied to all non-medical life care items, and a five percent (5%) growth rate should be applied to all medical life

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<sup>3</sup> In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

<sup>4</sup> The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

<sup>5</sup> Petitioner authorizes the disclosure of certain documents filed by the petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

care items. Thus, the benefits illustrated in the chart at Tab A that are to be paid through annuity payments should grow as follows: four percent (4%) compounded annually from the date of judgment for non-medical items, and five percent (5%) compounded annually from the date of judgment for medical items.

2. Life-contingent annuity

Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as he, J.T., is alive at the time that a particular payment is due. Written notice shall be provided to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of J.T.'s death.

3. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

**III. Summary of Payments Following Judgment**

- |    |   |                       |
|----|---|-----------------------|
| A. | Lump sum paid to petitioner, J.T.:  | <b>\$3,024,362.99</b> |
| B. | An amount sufficient to purchase the annuity contract described above in section II. B. |                       |

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General

C. SALVATORE D'ALESSIO  
Acting Director  
Torts Branch, Civil Division

CATHARINE E. REEVES  
Deputy Director  
Torts Branch, Civil Division

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/s/Lisa A. Watts  
LISA A. WATTS  
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Dated: August 10, 2017

## Appendix A: Proffered Items of Compensation for J.T.

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ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Year 2	Compensation Years 3-4	Compensation Year 5	Compensation Year 6	Compensation Year 7	Compensation Year 8	Compensation Years 9-10
				2017	2018	2019-2020	2021	2022	2023	2024	2025-2026
Medicare Part B	5%		M	3,214.80	3,214.80	3,214.80					
Medigap	5%		M	3,336.00	3,336.00	3,336.00	1,629.60	1,629.60	1,629.60	1,629.60	1,629.60
AARP Medicare Rx	5%		M	2,669.33	2,669.33	2,669.33	2,669.33	2,669.33	2,669.33	2,669.33	2,669.33
PCP	5%	*									
Sleep Specialist	5%	*									
ENT	5%	*									
PMR	5%	*									
PRP	5%			1,500.00							
Steroid Inj	5%	*									
Orthopedic Consult	5%	*									
Lidocaine Infusions	5%	*									
Pain Mngt	5%	*									
X-rays	5%	*									
Sleep Study	5%	*									
EMG	5%	*									
MRI of Cervical Spine	5%	*									
MRI of Shoulders	5%	*									
Spirometry	5%	*									
Lab Testing	5%	*									
Trazedone	5%	*									
Mexiletine	5%	*									
Gabapentin	5%	*									
Hydrocodone	5%	*									
Naltrexone	5%			303.20	303.20	303.20	303.20	303.20	303.20	303.20	303.20
Cymbalta	5%	*									
Alpha Lipoic Acid	4%			408.45	408.45	408.45	408.45	408.45	408.45	408.45	408.45
Acetyl L Carnitine	4%			228.51	228.51	228.51	228.51	228.51	228.51	228.51	228.51
Tylenol	4%			30.26	30.26	30.26	30.26	30.26	30.26	30.26	30.26
PT Eval	4%	*		150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00
PT	4%	*		900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00
PT Post PRP Inj	4%			1,200.00							



## Appendix A: Proffered Items of Compensation for J.T.

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ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Year 2	Compensation Years 3-4	Compensation Year 5	Compensation Year 6	Compensation Year 7	Compensation Year 8	Compensation Years 9-10
				2017	2018	2019-2020	2021	2022	2023	2024	2025-2026
OT Eval	4%	*									
OT	4%	*									
ST	4%	*									
Acupuncture	4%			710.00	570.00						
Massage	4%			960.00	960.00	960.00	960.00	960.00	960.00	960.00	960.00
Functional Restoration Program	4%			30,000.00							
Counselor	4%	*		1,680.00	1,680.00	1,680.00					
Adj Bed	4%			1,000.00							
Thumb Support	4%			64.32	64.32	64.32	64.32	64.32	64.32	64.32	64.32
Compression Gloves	4%			517.40	517.40	517.40	517.40	517.40	517.40	517.40	517.40
Finger Splints	4%			22.00	22.00	22.00	22.00	22.00	22.00	22.00	22.00
Athletic Tape	4%			52.17	52.17	52.17	52.17	52.17	52.17	52.17	52.17
Exercise Bands	4%			10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00
Bed Rail	4%			119.95							
Thera Cane	4%			39.95							
Arm Support	4%			42.95				42.95			
BiPap Machine	4%	*									
BiPap Mask	4%	*									
BiPap Tubing	4%	*									
BiPap Filters	4%	*									
Shower Seat	4%			87.24						87.24	
Hand Held Shower	4%			34.54						34.54	
Faucets	4%			233.95							
Grab Bars	0%			110.97							
Raised Toilet Seat	4%						49.95	9.99	9.99	9.99	9.99
Toto Bidet Seat	4%			418.90							
Soap & Shampoo Dispenser	4%			99.99							
Soft Touch Scissors	4%			23.95							
Bread Knife	4%			29.95							
Fork Knife	4%			22.95							
All Purpose Opener	4%			9.95							

## Appendix A: Proffered Items of Compensation for J.T.

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ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Year 2	Compensation Years 3-4	Compensation Year 5	Compensation Year 6	Compensation Year 7	Compensation Year 8	Compensation Years 9-10
				2017	2018	2019-2020	2021	2022	2023	2024	2025-2026
Steak Knife	4%			32.95							
Jar Opener	4%			10.95							
Foam Tubing	4%			13.95	2.79	2.79	2.79	2.79	2.79	2.79	2.79
Dress Horn	4%			13.95	2.79	2.79	2.79	2.79	2.79	2.79	2.79
Reacher	4%			32.95	10.98	10.98	10.98	10.98	10.98	10.98	10.98
Zipper Pull	4%			5.95	1.19	1.19	1.19	1.19	1.19	1.19	1.19
Bath Kit	4%			15.95	15.95	15.95	15.95	15.95	15.95	15.95	15.95
Body Brush	4%			22.95	4.59	4.59	4.59	4.59	4.59	4.59	4.59
Dr. Grip Pencil	0%			4.99							
Key Turner	4%			7.95	3.98	3.98	3.98	3.98	3.98	3.98	3.98
Warming Gel Mittens	4%			7.95	3.98	3.98	3.98	3.98	3.98	3.98	3.98
Handy Bar	0%			35.95							
Adaptive Computer Equip	0%			59.95							
Dragon Dictate	0%			220.96							
Shoulder Bag	4%			79.00	26.33	26.33	26.33	26.33	26.33	26.33	26.33
Allotment for Supplies	4%			300.00	82.50	82.50	82.50	82.50	82.50	82.50	82.50
Fitness Mat	4%			250.00							
Sport Cord	4%			209.95							
Therabath	4%			189.99							
Paraffin Beads	4%			39.48	39.48	39.48	39.48	39.48	39.48	39.48	39.48
Health Club	4%		M	759.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00
Infusions	4%		M	2,080.00	2,080.00	2,080.00	2,080.00	2,080.00	2,080.00	2,080.00	2,080.00
Home Health Aide	4%		M	8,112.00	8,112.00	8,112.00	8,112.00	8,112.00	8,112.00	18,928.00	18,928.00
Ancillary Services: Handyman Services	4%		M	960.00	960.00	960.00	960.00	960.00	960.00	960.00	960.00
Driving Eval	4%			500.00	500.00						
Blind Spot Mirror & Install	0%			67.50							
Memory Foam Steering Wheel Cover	4%			12.99	4.33	4.33	4.33	4.33	4.33	4.33	4.33
Mileage: Feinberg Functional Rest Prgm	4%			197.22							

**Appendix A: Proffered Items of Compensation for J.T.**

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ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Year 2	Compensation Years 3-4	Compensation Year 5	Compensation Year 6	Compensation Year 7	Compensation Year 8	Compensation Years 9-10
				2017	2018	2019-2020	2021	2022	2023	2024	2025-2026
Mileage: Stanford for Lidocaine Infusions	4%			740.44	740.44	740.44	740.44	740.44	740.44	740.44	740.44
Mileage: Pain Mngt & Sleep Dr.	4%			350.51	350.51	350.51	350.51	350.51	350.51	350.51	350.51
Mileage: Dr. Sebastian	4%			15.71	15.71	15.71	15.71	15.71	15.71	15.71	15.71
Mileage: UC Davis	4%			29.00	29.00	29.00	29.00	29.00	29.00	29.00	29.00
Mileage: Dr. Bodor	4%			29.07	29.07	29.07	29.07	29.07	29.07	29.07	29.07
Mileage: Ortho	4%			24.28	24.28	24.28	24.28	24.28	24.28	24.28	24.28
Mileage: Psych	4%			7.75	7.75	7.75	7.75	7.75	7.75	7.75	7.75
Mileage: Therapy	4%			96.08	96.08	96.08	96.08	96.08	96.08	96.08	96.08
Mileage: Massage	4%			4.90	4.90	4.90	4.90	4.90	4.90	4.90	4.90
Mileage: Acupuncture	4%			3.09	2.65						
Hotel at Stanford	4%			4,155.00							
Home Mods	0%			1,536.00							
Pain and Suffering				220,000.00							
Past Unreimbursable Expenses				145,000.00							
Annual Totals				436,467.99	28,867.72	27,795.07	21,243.82	21,246.81	21,203.86	32,141.64	32,019.86

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner for Yr 1 life care expenses (\$71,467.99), pain and suffering (\$220,000.00), and past unreimbursable expenses (\$145,000.00): \$436,467.99.

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

Annual amounts shall increase at the rates indicated above in column G.R., compounded annually from the date of judgment.

Items denoted with an asterisk (\*) covered by health insurance and/or Medicare.

Items denoted with an "M" payable in twelve monthly installments totaling the annual amount indicated.

## Appendix A: Proffered Items of Compensation for J.T.

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ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 11	Compensation Years 12-14	Compensation Year 15	Compensation Years 16-Life
				2027	2028-2030	2031	2032-Life
Medicare Part B	5%		M				
Medigap	5%		M	1,629.60	1,629.60	1,629.60	1,629.60
AARP Medicare Rx	5%		M	2,669.33	2,669.33	2,669.33	2,669.33
PCP	5%	*					
Sleep Specialist	5%	*					
ENT	5%	*					
PMR	5%	*					
PRP	5%						
Steroid Inj	5%	*					
Orthopedic Consult	5%	*					
Lidocaine Infusions	5%	*					
Pain Mngt	5%	*					
X-rays	5%	*					
Sleep Study	5%	*					
EMG	5%	*					
MRI of Cervical Spine	5%	*					
MRI of Shoulders	5%	*					
Spirometry	5%	*					
Lab Testing	5%	*					
Trazedone	5%	*					
Mexiletine	5%	*					
Gabapentin	5%	*					
Hydrocodone	5%	*					
Naltrexone	5%			303.20	303.20	303.20	303.20
Cymbalta	5%	*					
Alpha Lipoic Acid	4%			408.45	408.45	408.45	408.45
Acetyl L Carnitine	4%			228.51	228.51	228.51	228.51
Tylenol	4%			30.26	30.26	30.26	30.26
PT Eval	4%	*		150.00	150.00	150.00	150.00
PT	4%	*		900.00	900.00	900.00	900.00
PT Post PRP Inj	4%						

## Appendix A: Proffered Items of Compensation for J.T.

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ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 11	Compensation Years 12-14	Compensation Year 15	Compensation Years 16-Life
				2027	2028-2030	2031	2032-Life
OT Eval	4%	*					
OT	4%	*					
ST	4%	*					
Acupuncture	4%						
Massage	4%			960.00	960.00	960.00	960.00
Functional Restoration Program	4%						
Counselor	4%	*					
Adj Bed	4%						
Thumb Support	4%			64.32	64.32	64.32	64.32
Compression Gloves	4%			517.40	517.40	517.40	517.40
Finger Splints	4%			22.00	22.00	22.00	22.00
Athletic Tape	4%			52.17	52.17	52.17	52.17
Exercise Bands	4%			10.00	10.00	10.00	10.00
Bed Rail	4%			119.95	12.00	12.00	12.00
Thera Cane	4%			39.95	4.00	4.00	4.00
Arm Support	4%			42.95	8.59	8.59	8.59
BiPap Machine	4%	*					
BiPap Mask	4%	*					
BiPap Tubing	4%	*					
BiPap Filters	4%	*					
Shower Seat	4%					87.24	12.46
Hand Held Shower	4%					34.54	4.93
Faucets	4%						
Grab Bars	0%						
Raised Toilet Seat	4%			9.99	9.99	9.99	9.99
Toto Bidet Seat	4%						
Soap & Shampoo Dispenser	4%						
Soft Touch Scissors	4%						
Bread Knife	4%						
Fork Knife	4%						
All Purpose Opener	4%						

## Appendix A: Proffered Items of Compensation for J.T.

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ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 11	Compensation Years 12-14	Compensation Year 15	Compensation Years 16-Life
				2027	2028-2030	2031	2032-Life
Steak Knife	4%						
Jar Opener	4%						
Foam Tubing	4%			2.79	2.79	2.79	2.79
Dress Horn	4%			2.79	2.79	2.79	2.79
Reacher	4%			10.98	10.98	10.98	10.98
Zipper Pull	4%			1.19	1.19	1.19	1.19
Bath Kit	4%			15.95	15.95	15.95	15.95
Body Brush	4%			4.59	4.59	4.59	4.59
Dr. Grip Pencil	0%						
Key Turner	4%			3.98	3.98	3.98	3.98
Warming Gel Mittens	4%			3.98	3.98	3.98	3.98
Handy Bar	0%						
Adaptive Computer Equip	0%						
Dragon Dictate	0%						
Shoulder Bag	4%			26.33	26.33	26.33	26.33
Allotment for Supplies	4%			82.50	82.50	82.50	82.50
Fitness Mat	4%						
Sport Cord	4%						
Therabath	4%						
Paraffin Beads	4%			39.48	39.48	39.48	39.48
Health Club	4%		M	600.00	600.00	600.00	600.00
Infusions	4%		M	2,080.00	2,080.00	2,080.00	2,080.00
Home Health Aide	4%		M	18,928.00	18,928.00	18,928.00	18,928.00
Ancillary Services: Handyman Services	4%		M	960.00	960.00	960.00	960.00
Driving Eval	4%						
Blind Spot Mirror & Install	0%						
Memory Foam Steering Wheel Cover	4%						
Mileage: Feinberg Functional Rest Prgm	4%						

**Appendix A: Proffered Items of Compensation for J.T.**

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ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 11	Compensation Years 12-14	Compensation Year 15	Compensation Years 16-Life
				2027	2028-2030	2031	2032-Life
Mileage: Stanford for Lidocaine Infusions	4%			740.44	740.44	740.44	740.44
Mileage: Pain Mngt & Sleep Dr.	4%			350.51	350.51	350.51	350.51
Mileage: Dr. Sebastian	4%			15.71	15.71	15.71	15.71
Mileage: UC Davis	4%			29.00	29.00	29.00	29.00
Mileage: Dr. Bodor	4%			29.07	29.07	29.07	29.07
Mileage: Ortho	4%			24.28	24.28	24.28	24.28
Mileage: Psych	4%			7.75	7.75	7.75	7.75
Mileage: Therapy	4%			96.08	96.08	96.08	96.08
Mileage: Massage	4%			4.90	4.90	4.90	4.90
Mileage: Acupuncture	4%						
Hotel at Stanford	4%						
Home Mods	0%						
Pain and Suffering							
Past Unreimbursable Expenses							
Annual Totals				32,218.38	32,040.12	32,161.90	32,057.51

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner for Yr 1 life care expenses (\$71,467.99), pain and suffering (\$220,000.00), and past unreimbursable expenses (\$145,000.00): \$436,467.99.

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

Annual amounts shall increase at the rates indicated above in column G.R., compounded annually from the date of judgment.

Items denoted with an asterisk (\*) covered by health insurance and/or Medicare.

Items denoted with an "M" payable in twelve monthly installments totaling the annual amount indicated.